Chicago, (C. C.) 138 Fed. 209; *Slaughter-House Cases,* 16 Wall. 36. Courts however have decided that a municipal ordinance is unreasonable in view of the conditions in the municipality and declared the ordinance void. *Crawford* v. *City of Topeka,* 51 Kan. 756, 33 Pac. 476, 37 Am. St. Rep. 323, 20 L. R. A. 692. That a court has the power to decide as to the question of the reasonableness of a municipal ordinance regulating a condition that is not a nuisance per se or was not so at common law, see *State* v. *Dubarry,* 46 La. Ann. 33, 14 South. 298; *State* v. *Stone,* 46 La. Ann. 147, 15 South. 11. There are numerous cases holding that billiard halls and poolrooms are not nuisances *per se.* The principal case must not be understood as being in conflict with these cases since it merely upholds that billiard halls and poolrooms may, because of certain conditions, because of the peculiarity of their surroundings, become nuisances and as such are subject to absolute control by the municipality in the exercise of its police power.

MUNICIPAL CORPORATIONS—POLICE POWER—EMINENT DOMAIN.—The city of Aberdeen, Wash., acting under the authorization of Laws 1909, c. 147, entitled "an act empowering cities * * * to fill low lands within their borders and for that purpose to exercise the right of eminent domain for the taking and damaging of property, and providing a method for making compensation therefor, and providing for levying and collecting of special assessments on the property thereby benefited * * *," commenced filling in property of plaintiff, this property being situated in a low, swampy, district and shown to be a menace to public health. This suit is brought by the plaintiff to enjoin the prosecution of the work by the city on the ground that the city is encroaching on plaintiff's constitutional rights in that it has given him no opportunity of being heard by means of eminent domain proceedings and also that the prosecution of this work under the police power privilege is an unwarranted invasion of plaintiff's constitutional rights. *Held,* (FULLERTON, J. dissenting), the city may under the police power as enabled by the foregoing statute fill in low lands where these lands are unimproved without the exercise of eminent domain proceedings and assess the cost thereof against the landowner. *Bowes et ux* v. *City of Aberdeen et al.* (1910), — Wash. —, 109 Pac. 369.

The legislature may assert its police power to make an improvement common to all concerned, at the common expense of all, and the improvement need not be carried out under the law of eminent domain. This view is sanctioned by a very respectable line of decisions: *Charleston* v. *Werner,* 38 S. C. 488, 17 S. E. 33, 37 Am. St. Rep. 776; *Rochester* v. *Simpson,* 134 N. Y. 414, 31 N. E. 871 (both decided in 1892); *Nickerson* v. *Boston,* 131 Mass. 306; *Chicago & N. W. Ry. Co.* v *.City of Chicago,* 140 Ill. 309, 29 N. E. 1109; *State* v. *Schlemmer,* 42 La. Ann. 1166, 8 South. 307, 10 L. R. A. 135; *Baker* v. *City of Boston,* 29 Mass. (12 Pick.) 184, 22 Am. Dec. 421 (1831); *Slaughter-House Cases,* 16 Wall 36; *City of Rochester* v. *West,* 164 N. Y. 510. There is authority to the contrary however, a number of cases holding that a municipality in the exercise of its delegated police power can only go to the extent of abating or removing a nuisance and cannot under the guise

of abating a nuisance compel a land owner on whose land the nuisance exists to make his property conform to some previously conceived system of public improvement; *Eckhardt* v. *City of Buffalo,* 19 App. Div. I, 46 N. Y. Supp. 204; *In re Jacobs,* 98 N. Y. 98, 50 Am. Rep. 636. The principal case is complicated by the fact that the evidence seemed to show that the nuisance was aggravated by the granting of a railroad franchise by the city itself, the railroad embankments causing an increased impediment to the escape of tidal waters. The following cases are authority for the proposition that a city aiding or creating a nuisance may not cause it to be abated at the expense of the owner: *Hannibal* v. *Richards,* 82 Mo. 330; *Lasbury* v. *McCague,* 56 Neb. 220, 76 N. W. 862. This would seem to be a reasonable and equitable view of the matter but see *Davidson* v. *Boston & Maine R. R. Co.,* 3 Cush. 91. Questions of this nature must of necessity vary greatly and each is generally decided according to the individual circumstances of the case. The weight of authority in this country is with the majority opinion in the principal case.

NEGLIGENCE—CARE REQUIRED—LICENSEES.—Plaintiff brought an action of tort to recover for the death of his son by the fall of a derrick in defendant's quarry where he had been delivering and selling newspapers. It appeared that the boy entered the quarry by permission to sell his papers, that he had one or two regular customers in the quarry, to deliver to whom it was not necessary for him to travel the path whereon the accident occurred, and that he sold to other workmen on the quarry. *Held,* that the boy was only a licensee and that a company operating a stone quarry owes no duty to a mere licensee passing through the quarry to keep its derrick safe so that the licensee may not be injured by its accidental fall. *Norris* v. *Hugh Nawn Contracting Co.* (1910), — Mass. —, 91 N. E. 886.

The rule is well settled that where one uses private property by bare permission, he must use it as he finds it and the owner is held to no greater degree of care than to abstain from willful or affirmative negligence. *Louisville etc. R. Co.* v. *Sides,* 129 Ala. 399; *Seward* v. *Draper,* 112 Ga. 673; *Dixon* v. *Swift,* 98 Me. 207; *Smith* v. *Day,* 100 Fed. 244; *Birch* v. *City of New York,* 190 N. Y. 397. Plaintiff contended, however, that his intestate was not a mere licensee but was there by invitation. A licensee has been defined to be "a person who is neither a passenger, servant nor trespasser, and not standing in any contractual relation with the owner of the premises, and is permitted to come upon the premises for his own interest, convenience or gratification." *Northwestern El. R. Co.* v. *O'Mally,* 107 Ill. App. 599. The Massachusetts court in *Plummer* v. *Dill,* 156 Mass. 426, laid down the following rule: "To come under an implied invitation, as distinguished from a mere license, the visitor must come for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on there." The same test was applied in the cases of *Dixon* v. *Swift,* supra; *Muench* v. *Heineman,* 119 Wis. 441; and *Ill. Cent. R. R. Co.* v. *Hopkins,* 200 Ill. 122; and in *Hobbs, Admr.* v. *Blanchard & Sons Co.,* 74 N. H. 116, 65 Atl. 382, the court held that an invitation by servants of a lumber company to